

### **REMARKS**

Applicant appreciates the Examiner's thorough examination of the present application. Applicant has amended claims 1, 6, and 11 herein.

Applicant respectfully asserts that the claims are allowable herein over the rejections under 35 U.S.C. §102. Applicant respectfully requests favorable reconsideration of the claims based on the amendments and remarks set forth herein.

### **Rejections Under 35 U.S.C. §102**

Claims 1-4, 6-8, and 10-11 have been rejected under 35 U.S.C. §102 as being anticipated by Marotta. Applicant respectfully asserts that the claims, as amended herein and claims depending there from overcome and are allowable over the rejection. Claims 1, 6, and 11 have been amended to further clarify the claims.

The Marotta reference shows a beverage maker which includes a tube extending from the heated water tank 101 having a heating element 82. Water flows from the upper tank 41 into the heated water tank 101, not through the tube. Water flows out of the heated water tank 101 through the tube 30. Tube 30 then communicates with discharge outlet 42 to deliver water to the basket 40.

In contrast, the claimed invention includes an upper reservoir 40 which communicates with a heated water tank 50. Water flows from the basin to the tank through the fill tube 54. Water flows out of the heated water tank through the outlet port 47, not through the fill tube. The invention uses an insulated tube (see Fig. 2) to pass water from the basin to the heated water tank. This allows unheated water to flow from the basin to a lower portion of the tank to bring it into close proximity to the heating element 22. The tube 54 is insulated to help reduce heat transfer from the heated water in the upper section of the tank to the unheated water flowing through the tube. This helps maintain the water in the upper portion in the tank and a higher

temperature state so that it does not lose heat and is at a preferred temperature when it is dispensed through the outlet port.

With regard to the rejection under 35 U.S.C. §102, it is well settled, anticipation requires “identity of invention.” *Glaverbel Societe Anonyme v. Northlake Manufacture Mktg. & Supply*, 33 USPQ2d 1496, 1498 (Fed. Cir. 1995). Each and every element recited in a claim must be found in a particular prior art reference and arranged as in the claims. *In re Marshall*, 198 USPQ 344, 346 (CCPA 1978); *Lindemann Maschinenfabrik GMBH*, see *American Hoist and Derrick Company*, 221 USPQ481, 485 (Fed. Cir. 1984). Furthermore, in a rejection under 35 U.S.C. §102 (b) there must be no difference between what is claimed and what is disclosed in the applied reference. *In re Kalm*, 154 USPQ10, 12 (CCPA 1967); *Scripps v. Genentech Inc.*, 18 USPQ2d 1001,1010 (Fed. Cir. 1991).

Each and every element cited in the claims cannot be found in the Marotta reference. Marotta shows a tube extending from the heated water tank to the funnel. In other words, the tube takes water away from the heated water tank. In contrast, the claimed invention provides an insulated tube extending from a fill basin to the hot water tank. In other words, the tube brings water to the heated water tank. These elements are completely different such that Marotta provides an insulated tube for water flowing out of the heated water tank whereas the claimed invention provides an insulated tube for water flowing into the heated water tank.

As a result, there is a significant difference between what is claimed in the present application and what is disclosed in the Marotta reference. As such, the Marotta reference fails as a reference to support a rejection under 35 U.S.C. §102.

With the foregoing in mind, Applicant respectfully requests withdrawal of the rejection under 35 U.S.C. §102 and allow the claims as set forth herein.

If there is any issue remaining to be resolved, the Examiner is invited to telephone the undersigned so that resolution can be promptly affected.

It is requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response with the fee for such extensions and shortages in other fees, being charged, or any overpayment in fees being credited, to the Account of Barnes & Thornburg, Deposit Account No. 12-0913 (27726-98927).

Respectfully submitted,  
BARNES & THORNBURG LLP

A handwritten signature in black ink, appearing to read "Grant H. Peters", written over a horizontal line.

Grant H. Peters, Reg. No. 35,977  
One of the Attorneys for Applicant

P.O. Box 2786  
Chicago, Illinois 60690-2786  
Phone: 312-357-1313  
Facsimile: 312-759-5646  
**Customer No.: 23644**

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